

**Report of the  
Canada-United States  
Working Group  
on  
Telemarketing Fraud**

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**REPORT OF THE CANADA - UNITED STATES  
WORKING GROUP ON TELEMARKETING FRAUD  
EXECUTIVE SUMMARY**

During meetings on April 8-9, 1997 in Washington, D.C., President Clinton and Prime Minister Chrétien directed officials to prepare a joint study examining ways to counter the serious and growing problem of cross-border telemarketing fraud. This Report results from meetings and research conducted by law-enforcement and policy officials from various federal and state/provincial agencies of Canada and the United States.

Telemarketing fraud has become one of the most pervasive forms of white-collar crime in Canada and the United States, with annual losses in both countries in the billions of dollars. In recent years, authorities have observed concentrations of offenders in metropolitan areas including Las Vegas, Los Angeles-Orange County, Miami-Fort Lauderdale, Montreal, Toronto and Vancouver.

Telemarketing criminals frequently prey upon senior citizens, although all age groups have been victims. Many elderly victims have lost life savings to these criminals, with a loss of quality of life which is often physically and psychologically devastating, not only to the victims, but also members of their families.

"Telemarketing fraud" describes the use of telephones to deprive victims dishonestly of money or property or to misrepresent the values of goods or services. Low-cost telecommunications have made legitimate telemarketing popular, but also provide a means of conducting massive frauds, sometimes involving thousands of victims and tens of millions of dollars in losses.

The large numbers of victims and distances involved make telemarketing frauds costly and complicated to investigate and prosecute, especially when they are committed across national borders. Differences in legislation and procedural delays created by mutual legal assistance and extradition proceedings create further difficulties. The long distances and multiple jurisdictions involved in many cases highlight the need for effective cooperation among the governments and agencies involved as well as the private sector.

The Report examines the ways in which telemarketing fraud is committed; legal issues and options; consumer-education and prevention; and cross-border cooperation and strategy. It concludes that telemarketing fraud is a serious and expanding problem, and that cross-border cases are a challenge for both governments. With a sound strategy and the right combination of tools and tactics, Canada and the United States can cooperate even more closely to meet the increasingly international challenge of this most pernicious of white collar crimes.

The key recommendations of the Working Group follow this Executive Summary.

**REPORT OF THE CANADA - UNITED STATES  
WORKING GROUP ON TELEMARKETING FRAUD  
SUMMARY OF RECOMMENDATIONS**

The Working Group recommends:

- that the governments and agencies of both countries clearly identify telemarketing fraud as a serious crime; (p. 7)
- that both countries explore the use of remote testimony in criminal proceedings, by video-teleconferencing or similar means, to reduce costs; (p. 15)
- that the legal and technical potential and limits of electronic surveillance as a tool against telemarketing fraud be explored further; (p. 18)
- that both governments examine the regulation of telephone services and options for denying telephone services to telemarketing offenders; (p. 19)
- that the scope of the existing mutual legal assistance arrangements be considered to determine whether they might be expanded to deal more effectively with telemarketing-fraud cases; (p. 20)
- that both governments clarify the circumstances under which mutual legal assistance requests are needed, by providing information and advice to the agencies involved; (p. 20)
- that extradition arrangements be examined, and if possible modified, to facilitate and accelerate extradition in telemarketing fraud cases; (p. 21)
- that federal deportation laws which might apply to foreign nationals engaging in telemarketing fraud be reviewed, and that enforcement agencies be given information about when deportation may be an option; (p. 21)
- that research be conducted into offenders, victims and other aspects of telemarketing fraud to create effective educational materials and strategies to prevent it; (p. 21)
- that governments and agencies cooperate as closely as possible in developing, maintaining and disseminating educational materials, and in coordinating education and prevention efforts; (p. 21)
- that strategies to control telemarketing fraud be coordinated between Canada and the United States at the agency, regional and national levels; (p. 25)

•that an ongoing binational working group serve as an overall coordinator and deal with national and binational telemarketing fraud issues as they arise; (p. 28)

•that regional task-forces be encouraged to cooperate across the international border to the maximum extent possible; and (p. 28)

•that, to further coordination, governments and agencies examine privacy and other laws relevant to cross-border shared access information systems with a view to expanding access to such systems to the maximum extent possible. (p. 29)

# 1. INTRODUCTION

The growing availability of telephone and other communications facilities provides opportunities for many forms of interaction and commerce. Telemarketing, the use of telephones to market goods and services, has grown rapidly. In recent years, total sales in the United States and Canada have exceeded US\$400/C\$500 billion per year. Most telemarketing activities are legitimate, but some, unfortunately, are not. Telemarketing fraud has become one of the most pervasive and problematic forms of white-collar crime in Canada and the United States, accounting for as much as 10% of the total volume of telemarketing.

On April 8, 1997, Prime Minister Chrétien and President Clinton directed their officials to establish the Binational Working Group to examine the problem and report on ways to address it. The Working Group was asked to survey measures already in place and recommend further steps. As a result, it examined each country's legislation, legal procedures, enforcement practices, and education and prevention efforts, and has developed recommendations for cooperative and coordinated strategies to deal with cross-border telemarketing frauds. The Binational Working Group has prepared this Report pursuant to its mandate, in a spirit of mutual commitment to address a serious problem that affects the citizens of both countries.

"Telemarketing fraud" is used in this Report to describe a range of activities in which telephones are used to deprive victims dishonestly of money or property or misrepresent the true values of goods or services on offer. This covers a range of offences under Canadian and U.S. law. It is intended to describe the general problem as encountered by law-enforcement agents, regulators and prosecutors in the United States and Canada.

Criminals in both countries have been drawn to the offence by large proceeds and relatively low risks of detection, prosecution, and punishment. Since the early 1980s, as low-cost telecommunications made the telemarketing of legitimate goods and services increasingly popular, offenders have recognized that it also provided an effective means of conducting potentially massive frauds. The large number of victims who can be targeted using telephones vastly increases potential proceeds. A single telemarketer with a well-organized scheme can easily contact hundreds of victims, and organized groups can target thousands, particularly if a scheme continues for any length of time before being detected and stopped. Losses to each victim run from hundreds to thousands of dollars, and in some cases to much more. A single offender can easily earn several hundred thousand dollars per year, with larger "boiler room" operations extracting tens of millions of dollars.

The use of telephones also enables criminals to target victims at long distances, and across provincial, state and international borders. This ability highlights differences between legal systems and usually involves more elaborate arrangements for law-enforcement cooperation. It generally complicates investigations and prosecutions and increases the costs and length of time needed to bring offenders to justice or recover proceeds. The nature and growth of telemarketing fraud have made trans-boundary offences more frequent, which now places new demands on traditional Canada-U.S. legal cooperation.

The Working Group reviewed evidence drawn directly from the substantial practical experience of its members, the officials of both countries who deal with the problem personally. The Working Group believes that more structured research on telemarketing fraud is called for, but the evidence it has already seen is compelling. **The evidence clearly demonstrates that telemarketing fraud is a serious economic crime problem. The devastating consequences it has for some of the most vulnerable citizens of the United States and Canada require that immediate and effective steps be taken.**

The Working Group examined the problem of telemarketing fraud from three perspectives: legal matters, public education and prevention, and cooperation and strategy. The Report addresses these in separate sections. The Working Group cautions that there is no simple solution to telemarketing fraud: a truly effective response must draw elements from all three areas. It is hoped that this Report will lay the foundation for a joint program of effective measures to benefit both countries' populations.

## 2. THE OFFENCE

Telemarketing fraud has existed, in one form or another, for many years, but it has expanded significantly since the early 1980s. In recent years, authorities have observed concentrations of offenders in major metropolitan areas throughout North America, including Atlanta, Houston, Las Vegas, Los Angeles-Orange County, Miami-Fort Lauderdale, Montreal, Tampa-St.Petersburg, Toronto and Vancouver. Telemarketing fraud is a dynamic phenomenon: when authorities in one region crack down, offenders who are not caught often simply go elsewhere and start new schemes or in some cases, turn to other forms of crime.

### 2.1 CHARACTERISTICS OF TELEMARKETING FRAUD

Telemarketing fraud, like other frauds, depends on the offenders' use of deception to obtain money or property from their victims, but it has a number of unique characteristics.

- **Offenders require telecommunications facilities.**

Telephones are an indispensable tool for offenders. They allow the offenders to limit and manipulate information, concealing information about themselves while passing on whatever will deceive the victim. They also permit offenders to reach large numbers of victims quickly and at long distances. Not all of the technological advantages fall to the offenders, however. The use of telephones creates opportunities to attack the problem. Calls can be intercepted, traced back to offenders, and recorded for use as evidence, for example.

Offenders use their ability to manipulate what victims hear to maximum advantage. The objective is to establish credibility and rapport while conveying the misinformation needed to persuade victims to part with funds, overcome objections or dissuade them from seeking information or advice elsewhere. As one telemarketer boasted:

What you're doing as a salesman . . . is painting a picture. Soon as they pick up the phone, and I get on the phone with them, my hand is on the way. . . . [T]wo hands go through that phone. One hand goes up to the wall and starts painting pictures, the other hand is in their checkbook . . . and writing it out.

They may use blatant lies or more subtle misrepresentations:

"One [of] my best, best lines . . . works great: 'Thelma, I can't tell you what you're getting but I sure hope you live long enough to enjoy it all.'

The lack of face-to-face contact allows offenders to impersonate government and corporate officials to increase credibility, and in some cases, to coerce reluctant victims. Offenders often use false names, and victims can only identify them by voice, if at all, creating a serious obstacle for investigators and prosecutions. Telephones also create economies of scale by allowing a single caller to target a large number of victims in a short time and at long distances. Offenders maximize proceeds by focusing on target-groups most easily victimized, and by making large numbers of



calls quickly, focusing on those who appear susceptible and hanging up on those who resist.

A key to successful telemarketing fraud is convincing victims to pay quickly, so offenders receive the funds before victims can have second thoughts or seek advice. To get the money before victims can reconsider, offenders often use telephones to process credit-card transactions, or arrange for couriers to pick up cheques or money orders directly from victims' homes. Telephones are also used for follow-up calls where victims do not pay promptly. In some schemes, offenders have victims send payments to commercially-rented "drop boxes", which can make tracing funds more difficult.

- **Offenders do not have to be near victims.**

Unlike other frauds, telemarketing offenders and operations do not have to be near their victims. This creates two major concerns: the dispersal of victims over wide areas complicates investigation and prosecution, and the victim-offender distance makes it possible for offenders to relocate when necessary to maximize benefits and/or minimize risks. Offenders know this and act accordingly: agencies cited cases where callers avoided near-by victims or had lists of "do not call" jurisdictions, where enforcement activities were rigorous or active at the time, posted prominently in their work areas.

The distances between offenders and victims raise other concerns:

- the dispersal of victims conceals the true numbers of victims and total proceeds of most frauds,
- the distance and lack of personal contact between victims and investigators can hinder efforts to determine important information about victims and the serious impact of the offense, particularly elderly victims defrauded of life-savings,
- the dispersal of victims substantially increases the costs of the travel and coordination needed to investigate and prosecute cases, and,
- the dispersal of victims complicates and delays investigation and prosecution as new victims, jurisdictions, and agencies are identified and operations must be coordinated.

- **Offenses can be committed across provincial, state, and national boundaries.**

Cross-border telemarketing fraud generates many of the same problems associated with the dispersal of offenders and victims, but the problems are magnified by differences in legislation and by national sovereignty. Cooperation between agencies becomes more formal and complex when they are in different jurisdictions. Mutual legal assistance (*MLAT*) requirements sometimes apply to investigative procedures, and international extradition is necessary to bring offenders into victim-jurisdictions for trial. This adds to costs and creates significant delay, a major concern when victims are elderly. Legislative discrepancies may also complicate getting evidence gathered in one jurisdiction before a court in another.

- **Telemarketing fraud is a form of organized criminal activity.**

Telemarketing fraud usually involves the organization, pre-planning and coordination of individual offenders which is characteristic of organized criminal activity. In some cases, the high profits have also attracted members and associates of traditional criminal organizations. To operate a large telemarketing scheme, it is necessary to set up a "boiler room" equipped with a large number of telephone lines, employ callers to contact victims, provide callers with lists of information about prospective victims (called "mooch lists" or "sucker lists"), set up means to collect proceeds and, often, to set up safe "drop boxes" to make tracing proceeds difficult.

Schemes are often crafted to make them appear legitimate or to make elements of the offense difficult to prove. Such schemes are difficult to shut down completely unless all key members are identified, caught, convicted, incarcerated or incapacitated and stripped of their illegal gains. Offenders have used proceeds to fund defence litigation or fight prosecution or extradition. One telemarketer recently told a prosecutor:

I'd rather spend a million dollars fighting extradition than paying it back in restitution [to the victims].

- **Victims are chosen for certain characteristics, especially age.**

Victims are not created at random or by accident. They are chosen by the offenders themselves because they are vulnerable in some way and because they have enough money or assets to be attractive. Victim-selection can be done directly, by researching specific information about victims or buying "mooch" or "sucker lists" from other offenders or list-brokers. It can also be done indirectly, by getting potential victims to come forward in response to some form of general solicitation such as a "prize promotion", or "cold-calling" large numbers of people at random with some offer to which those who are vulnerable are likely to respond. Those already on "mooch" or "sucker" lists are seen as willing to send money to similar schemes in the past and are more likely to be targeted again.

The Working Group noted one particularly striking characteristic of telemarketing fraud: those at the highest risk of being victimized are those who have

already been victimized in the past. Once an individual has been identified as vulnerable, offenders will repeatedly target him or her until all assets are gone. Offenders not only re-use the victim information, they also commonly sell it to other offenders or brokers of such information.

Senior citizens in both countries are over-represented among victims, and offenders have admitted to targeting them specifically. The evidence indicates that offenders believe older people have more assets and are more susceptible to techniques such as excitement tactics or appeals to altruism. Agencies in both countries agreed that those who lost large amounts were more likely to be of retirement age or older, and that victimization tended to increase with age. A 1996 survey by the American Association of Retired Persons (AARP) showed that while 36 percent of the adult population is age 50 or older, 56 percent of the victims were 50 or older.

The elderly are not only more susceptible, they tend to be more seriously affected when they are victimized. Investigators reported many cases where victims had lost most or all of their life savings. Some had lost their homes or been forced to sell them to meet day-to-day living expenses. Unlike younger people who can work over a number of years to replace lost assets, the elderly usually are not in a position to do so. The loss of quality of life or standard of living can be physically and psychologically devastating and irreversible, and victims may become suicidal as a result. Families also feel the impact indirectly, if they are called upon to support a formerly self-sustaining senior citizen.

The Working Group noted the following problems associated with older victims of telemarketing fraud:

- Older victims often experience shame or embarrassment about losing large amounts. They may be reluctant to report the crime to relatives or to the police, and perhaps reluctant to testify about it later. Some may fear that, if they tell relatives, they will be seen as incompetent and lose control over their affairs.
- Older victims may be unable to recall details of the fraud, or be unable or unwilling to explain the true impact on their lives. This can conceal the seriousness of the offence from friends, relatives, police, and the courts which sentence offenders.
- Older victims sometimes die or become incapacitated before they can testify, particularly where the accused must be extradited before they can be prosecuted.
- Older victims are often physically unable to travel to testify at trials held in the jurisdictions of the offenders or other victims.

The Working Group is concerned that because fraud victims are induced to cooperate in their own losses, those who have never talked to victims or offenders personally may blame the victims or hold them partly responsible, suggesting that

victims "brought it on themselves," were "just greedy," or should have been more prudent. The reality is more complex. Telemarketing fraud involves the victimization of innocent persons by dishonest or deceptive conduct. This is a crime in every jurisdiction in Canada and the United States, and it is important that it be clearly labelled as such. **The Working Group recommends that the governments of both countries and their representative agencies clearly identify telemarketing fraud as a serious crime, and that public information and educational materials include this clear and unambiguous statement as a central theme.**

## **2.2 THE REAL FACE OF TELEMARKETING FRAUD: HOW VICTIMS ARE DECEIVED**

Evidence from fraud investigations shows that telemarketing schemes use a wide variety of influence techniques, ranging from friendly conversation to outright demands or even threats, to persuade victims to part with their money. Many calls include the following elements intended to mislead victims and secure their compliance.

- **Excitement.** Schemes often begin with statements to excite the victim, interfering with the ability to think clearly and calmly. In the words of the offenders themselves:

...if you sound excited about it, then they're gonna get excited about it.

[To victims:]...you were involved in a [promotional] campaign, you were promised to receive some very large corporate award, do [you] remember that? . . . Great. Sit down. They told ya the man in charge of the place would be callin' ya. Well, that's me. Take a deep breath and don't be nervous. [To interviewer:]...I just scare the [expletive] out of 'em right into it.

- **Claims of Authority.** Offenders often falsely claim that they hold a position of high authority in some organization or as a government official:

I make them understand the importance of my position, being the . . . promotional director. . . . And right off the bat they're excited . . . because when [it's] the owner, they think of you as the higher source.

Impersonating government officials can also serve as the basis for subtle or even brazen coercion. Offenders posing as tax or customs officials, for example, sometimes "remind" the victims that they are under legal obligation to pay taxes on the funds the offenders falsely state will be paid to the victims.

- **Pretence of Friendship.** Victims have described calls in which offenders ingratiated themselves as quickly as possible by convincing them that the offender was sincerely interested in them on a personal level. One woman told authorities that she did not agree to send money to one telemarketer until he had spoken with her eight or nine times. Another spoke of a telemarketer who pretended to share personal details with her about his own wife and children. Others have been sent modest gifts, such as flowers, to reinforce their belief that they were dealing with friends. Isolated and lonely victims are seen as particularly vulnerable to such

tactics: offenders have told police their ideal "mark" is an elderly person, home alone, with no contact with family members.

- **Urgency.** Offenders routinely include an element of urgency in their pitches, stressing that the prize, investment, or other item being offered will not be available unless the victim sends the funds quickly. This puts pressure on the victim to react before thinking the proposal over. It also gives the offender an excuse for collecting the funds using couriers, wire-services or credit-card transactions before the victim has second thoughts or gets independent advice.

The ultimate purpose of these tactics is to persuade the victim, through false and deceptive means, to part with money or assets, either in return for some benefit or out of altruism. The following are some of the most common schemes considered by the Working Group.

- **Advance-fee Loan or Credit Schemes.** Telemarketers seek out people with bad credit and offer them loans or credit cards in exchange for fees. Victims offered loans never receive them. Victims offered credit cards usually only get a standard application form or generic information on how to apply.
- **Foreign Lottery Schemes.** Telemarketers offer victims the opportunity to "invest" in tickets in well-known foreign lotteries (e.g., Canada or Australia), or give them a "one in six" chance of winning a substantial prize. This is a common cross-border offence, since it plays upon the ignorance of victims of the rules (or even the existence) of foreign lotteries. If offenders purport to sell real lottery chances but deceive victims about their chances of winning, it may be both a gambling offence and fraud; if real chances are sold without deception, it may still be a gambling offence.
- **Investment Schemes.** Victims are sold "investments" in a wide range of merchandise or securities that appear to offer high profit-margins. The fraud lies in misrepresenting the true value (or actual existence) of what is being sold, and/or the true extent of the risk in buying it. Common "opportunities" have involved stocks or securities, investment-grade gemstones, precious or strategic metals or minerals, and business opportunities such as oil and gas ventures, pizza ovens, and ostrich farms. These schemes commonly defraud victims more than once (see "reloading", below). Once funds have been committed, the victim can be induced to make additional payments to increase the value of the "investment" or avoid its loss (e.g., "margin calls"). Since legitimate investments normally tie up assets for extended periods, victims often do not realize for some time that they have been defrauded.
- **"Prize-Promotion," "Gimme Gift," or "Cheap Gift" Schemes.** Telemarketers "guarantee" that the victims have won valuable prizes or gifts, such as vacations or automobiles, but require victims to submit one or more payments for non-existent shipping, taxes, customs or bonding fees, or anything else the offender thinks plausible. Some schemes never provide their victims with any prize or gift, while others provide inexpensive items, often called "gimme gifts" by U.S. telemarketers and "cheap gifts" by Canadian telemarketers.

- **"Telefunding" Schemes.** These prey on the charity of victims, soliciting donations for worthy causes, such as antidrug programs or victims of natural disasters. The pitch may simply ask for donations, or it may include other inducements, such as donor eligibility for valuable prizes which never materialize (see "prize promotion" schemes, above). Charitable donors do not usually expect something in return for their contribution, and may thus never become aware that they have been defrauded.

- **Travel-Related Schemes.** Fraudulent telemarketers purporting to be travel agencies offer substantial travel packages at comparatively low cost. The use of travel as a commodity makes the long-distance nature of the transaction plausible. The fraud usually involves lies, misrepresentations, or non-disclosure of information about the true value of travel and accommodations, limitations or restrictions on when or where purchasers may go, or what awaits them at the destination. In some cases, the travel proves to be a complete fabrication or has so many terms and conditions as to be completely unusable.

- **"Reloading" and "Recovery Room" Schemes.** These target the same victims again and again. Persons victimized once are most likely to be deceived repeatedly. Unfortunately, victims' understandable desires to recover their original losses make them more vulnerable to further schemes. This is known as "reloading" or "loading." Those who "invest" money are "reloaded" for more to protect or increase their investment, those asked for customs or shipping fees are "reloaded" for additional charges, and those who give to a spurious "worthy cause" are often "reloaded" for further donations.

"Recovery room" schemes exploit the victim's desire to recover losses from previous frauds. Offenders, often from the same organization which defrauded the victim in the first place, call with inside knowledge of the fraud and a promise to recover the losses if "taxes" or "fees" are paid. A common tactic of callers is to represent themselves as law-enforcement or other government or professional employees (e.g., bank or stock-exchange officials), using inside knowledge of the victim and the fraud to establish credibility. "Recovery room" operations frequently deprive victims of their last remaining funds.

### **3. LEGAL ISSUES AND OPTIONS**

#### **3.1 CONSTITUTIONAL JURISDICTIONS**

The constitutions of Canada and the United States allocate legislative and prosecutorial powers between the federal and state/provincial governments differently. This affects the structures and coordination of strategies in each country and between the two countries. Differences in government structures and terminology must also be borne in mind when reviewing the legal tools available.

- **In Canada,** the power to make criminal law is exclusively federal, but provinces can create offences necessary for matters over which they have jurisdiction. This includes "property and civil rights", which most provinces have used to regulate local commerce and deceptive trade practices. Fraud and other federal *Criminal*

Code offences are prosecuted by the Provincial Attorneys General, but federal offences under other statutes (*Competition Act*, *Income Tax Act*, *Customs Act*, *Telecommunications Act*) are prosecuted federally. 1997 *Criminal Code* changes created a new federal jurisdiction to prosecute *Criminal Code* offences committed by "criminal organizations", which would include most telemarketing cases.

- **In the United States**, both state and federal governments have authority to enact criminal, quasi-criminal, and civil statutes: the states, for conduct or effects within their borders, and the federal government, for conduct that Congress may regulate under one or more of the broad grants of power under the *Constitution* (e.g., the power to regulate interstate and foreign commerce). Both levels of government may act to prohibit, regulate or prosecute fraudulent telemarketing activities.

### **3.2 CRIMINAL AND QUASI-CRIMINAL POWERS AND OFFENCES**

Telemarketing fraud, as noted, includes a range of schemes which may violate multiple criminal, quasi-criminal or civil statutes in both countries.

### 3.2.1 - Canada

**Fraud-related *Criminal Code* offenses.** The *Criminal Code* makes basic fraud (dishonest deprivation) an offence: s.380(1) includes cases where either "...the public or any person" is defrauded, which allows for charges based on single transactions or a single "defrauding the public" charge where large numbers of victims are targeted. The offence is punishable by up to 10 years if the value exceeds C\$5,000. Canada has no *Criminal Code* offence of using telecommunications systems to commit frauds, but does have an offence of using the mails (s.381). Expanding this to include telecommunications media would provide an additional offence which could be used in telemarketing cases, and this is presently under consideration.

34 other sections of the *Criminal Code* (ss.380-414) create fraud offences which apply in specific circumstances. Some deal with commodities (stocks, ss.383-84, real property, ss.385-86, minerals, s.394), and others with the means of commission (fraudulent title documents, receipts, impersonation). Offences other than fraud may also apply in some cases. For example, both fraud and gambling offenses may apply to schemes involving the sale of dubious lottery tickets. (ss.206-07).

**Other federal offences.** Federal offences in statutes other than the *Criminal Code* are considered criminal offences in Canada, but are prosecuted by the federal Attorney-General, not the provinces. Those applicable to telemarketing fraud include the following.

- ***Competition Act.*** This contains a series of offences dealing with misleading advertising and deceptive marketing practices. They are strict liability criminal offences, for which the Crown does not have to prove the intention to mislead or defraud. The law provides for unlimited fines (up to \$C500,000 have been imposed) and imprisonment for up to 5 years. The *Act* also provides for search and seizure, compulsory production or disclosure of information and other enforcement powers.

Apart from the *Criminal Code* offences, telemarketing fraud generally falls within the federal *Competition Act* and the mandate of the Industry Canada's Competition Bureau, the agency responsible for enforcing the *Act*. Legislation introduced by the Industry Minister in November 1996, which was not enacted by the end of the 1996-97 session, proposed to create a specific offence of "deceptive telemarketing". This would require telemarketers to make full and fair disclosure of whatever was on offer and to criminalize misleading or material non-disclosure. The proposed amendments also included provision for injunctions against telemarketers and service-providers which could be used to disconnect or block telephone service in some cases. Similar legislation is presently under consideration, and the Minister proposes to re-introduce it during the 1997 fall session.

- ***Income Tax Act.*** This requires employers to retain and remit funds for employee taxes and benefits (e.g., pension contributions) and provides offence and recovery provisions when this is not done. Ss.238-39 of the *Act* also contain



basic offences dealing with tax evasion and filing or providing false or misleading information.

- **Excise Tax Act.** Canada has a national Goods and Services Tax (GST, or HST - "harmonized sales tax", in some provinces). Those who provide goods or services in excess of C\$30,000 per year are required to register with Revenue Canada and report dealings on an ongoing basis.
- **Customs Act and Customs Tariff.** These require the declaration (with accurate values) of goods entering Canada. Failure to comply is an offence which may apply in some cross-border merchandise frauds.
- **Federal proceeds of crime and money-laundering provisions.** Part XII.2 of the *Criminal Code* provides a comprehensive scheme for the tracing, recovery, seizure and forfeiture of proceeds. The scheme is invoked for all "enterprise crime offences", which (s.462.3) include the basic fraud offence. Actions taken to "launder" funds which are proceeds of crime are also an offence (s.462.31).
- **Organized crime offences and powers.** 1997 *Criminal Code* amendments created a new offence of participating in a criminal organization and expanded powers to investigate and prosecute "criminal organization offences". This includes any fraud involving five or more offenders, which will catch most telemarketing fraud cases. Expanded powers include electronic surveillance and search and seizure provisions. Offences committed by criminal organizations can be prosecuted by either the federal government or the provinces. Court orders can be used to bar those charged or convicted from taking part in crime-related activities, and might be used to deny access to telemarketing equipment.

**Provincial offences.** Canadian provinces have no power to enact criminal law, but may create offences dealing with "property and civil rights", which includes many commercial activities. Eight of the ten provinces have enacted offence and regulatory provisions dealing with unfair or deceptive trade practices. These are minor in comparison with the *Criminal Code* fraud offences and punishments, but are also subject to a lower procedural standard under the *Canadian Charter of Rights and Freedoms*, which makes them easier to prosecute. Maximum fines range from C\$2,000-100,000, with imprisonment up to three years. Conduct such as inflating prices or taking advantage of particularly vulnerable consumers, not usually elements of fraud, are included in several.

### 3.2.2 - United States

**Fraud-related federal offenses.** Federal criminal law in the United States includes a number of statutes that apply to telemarketing fraud, each of which has a basic maximum penalty of five years' imprisonment. The most frequently used are mail fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343), which prohibit the use of the mails or wire communications in a fraudulent scheme, and the general conspiracy statute (18 U.S.C. § 371). Under established case law, everyone in a scheme (owners, managers or salespeople) is criminally liable not only for the conspiracy or personal acts of fraud, but also for all foreseeable criminal acts of coconspirators.

Other fraud-related federal offenses which have been used in telemarketing fraud prosecutions include: identification fraud (18 U.S.C. § 1028), which prohibits the misuse and unlawful transfer of identification documents such as Social Security cards; credit card fraud (18 U.S.C. § 1029), which prohibits obtaining or trafficking in credit card information with intent to defraud; transportation of property taken by fraud (US\$5,000 or more) across state or national boundaries (18 U.S.C. § 2314); use of false names in mail-fraud schemes (18 U.S.C. § 1342); and financial institution fraud (18 U.S.C. § 1344), which broadly prohibits schemes to defraud financial institutions.

**Other federal offences.** Like Canada, the United States has several other statutes that apply to telemarketing fraud, including the following.

- **Tax Offences.** Income-tax offences may apply where offenders do not report or under-report income, or where false information is given: 26 U.S.C. §§ 7201 (attempt to evade or defeat tax), 7203 (wilful failure to file return), 7206 (fraud and false statements), and 7207 (fraudulent returns, statements, or other documents).
- **Lottery Offences.** Two federal criminal statutes deal with foreign lottery-related material. 18 U.S.C. § 1301 contains multiple prohibitions on importing or transporting tickets and related materials, and 18 U.S.C. § 1302 deals with sending or delivering such materials (including funds to purchase tickets) by mail.
- **Money Laundering and Proceeds of Crime.** 18 U.S.C. §§ 1956 and 1957 prohibit laundering proceeds of crime, including mail, wire and other frauds. The Department of Justice can also obtain criminal forfeiture of proceeds, if it can prove laundering and link the proceeds and the original offences.
- **Forfeiture.** In addition to the opportunities for criminal forfeiture noted above, the Justice Department is supporting legislation in the U.S. Senate which would extend the forfeiture powers directly to various telemarketing fraud offences, broadening federal powers to seek forfeiture in such cases.

**Sentencing provisions.** U.S. federal courts apply *Sentencing Guidelines* which authorize longer sentences for frauds that cause greater losses to victims. Total proceeds, numbers of offenders and numbers and ages of victims are all taken into consideration. The owner of a fraudulent telemarketing business, using five or more telemarketers, which took in more than US\$200,000 primarily from senior citizens might be subject to imprisonment for 41-51 months, whereas the owner of a

similar fraudulent telemarketing business which took in more than \$1.5 million might be subject to imprisonment for 63-78 months.

A 1994 penalty enhancement statute (18 U.S.C. § 2326), provides for up to an additional five years' imprisonment in some federal telemarketing fraud cases, and up to 10 additional years if the offence targeted persons over 55 or victimized more than 10 persons over 55. The U.S. Congress is now considering legislation to increase punishments for persons conducting a scheme to defraud U.S. residents from a foreign country.

**State criminal laws.** Each state has the power to make criminal laws for conduct within, or having effects within, its borders. Two general categories apply to telemarketing fraud. First, each state typically has one or more general fraud statutes. Second, 27 states have specific statutes imposing regulatory requirements (e.g., business registration, licensing of salespeople, posting bonds) on telemarketers doing business within their borders, with criminal penalties for failing to comply. Penalties differ from state to state and with the seriousness of the offences.

Although state legislatures enact these measures, city or county prosecutors frequently enforce them. In some states these prosecutors have concurrent jurisdiction with state Attorneys General to do so. In 23 states, the Attorneys General have no statutory power to prosecute criminal telemarketing, but city or county prosecutors may designate or deputize state Attorneys General to do so, an approach used in Iowa. Under any of these approaches, the states have criminal authority to prosecute telemarketing fraud that can operate concurrently with federal authority.

### **3.3 EVIDENCE LAWS AND PROCEDURES**

The Working Group did not consider or identify any specific shortcomings in the evidence laws of either country, but it is concerned that substantial distances between investigators, victims and courts and the reduced ability of some older victims to travel can create obstacles and add costs to successful prosecutions. One partial solution considered was allowing victims or other witnesses to testify by live video teleconferencing or videotape in appropriate cases. There do not appear to be any insurmountable legal or constitutional obstacles to live videoconferencing in either Canada or the United States, provided that the basic rights of accused persons are protected.

**The Working Group recommends that both governments explore legal and technical avenues towards the use of remote testimony in criminal proceedings, by video-teleconferencing or similar means.**

In Canada, amendments to the *Canada Evidence Act* and *Criminal Code* dealing with video-link evidence are presently under consideration. To make such testimony feasible, video facilities close to victims will be needed, and may already exist in various government agencies and regional offices. The U.S. Department of Justice and Royal Canadian Mounted Police are compiling lists of suitable video conference facilities operated by law enforcement agencies which would be suitable for taking testimony or conducting interviews.

### **3.4 REGULATORY ENFORCEMENT**

In both Canada and the United States, administrative agencies at the federal and provincial/state levels have powers to regulate general trade and commerce which can be used to control telemarketing and prohibit unfair or deceptive practices. As noted above, the organization of agencies and legislation differs due to constitutional and governmental factors, although the types of conduct regulated or prohibited are similar in both countries. In Canada, regulatory provisions can fall within the federal criminal law power, and the federal *Competition Act* is regulatory legislation enforced by a combination of administrative and criminal powers. U.S. agencies such as the Federal Trade Commission (FTC) use administrative or civil proceedings to enforce their regulations directly, and refer criminal allegations to the Department of Justice. The Canadian provinces have the primary responsibility for enforcing and prosecuting the federal *Criminal Code*, and can apply a combination of quasi-criminal, regulatory and administrative powers to their own provincial offences. State powers are similar, combining criminal and non-criminal measures.

#### **3.4.1 Canada**

Several agencies have administrative or regulatory powers which can be used against improper telemarketing activities.

- **The federal Competition Bureau** is an agency within Industry Canada with both civil and criminal enforcement powers under the *Competition Act*. It is independent, reporting to the Director of Investigation and Research, who is appointed under the *Act*. The Bureau's Fair Business Practices Branch promotes a fair and competitive marketplace by preventing misleading advertising and other deceptive marketing practices. It administers the regulatory criminal law provisions of ss.52-60 of the *Act*, and conducts investigations using the powers provided. Investigating deceptive telemarketing practices is presently an enforcement priority. This now falls under s.52(1)(a) (false or misleading representations in promoting products, services or business interests). Amendments to deal specifically with telemarketing are now being proposed, as noted above. The Branch is also actively involved in cooperative cross-border enforcement and in education and prevention programs in this area.

- **Revenue Canada**, the agency responsible for enforcing the *Income Tax Act*, the *Excise Tax Act*, the *Customs Act* and the *Customs Tariff* has units responsible for all of these areas. Generally they may inspect, compel disclosure of business tax, payroll or other records, freeze accounts or transactions, and in the case of Canada Customs, inspect international shipments and related documents. Offences relating to obstruction, non-compliance with demands, non-payment, or providing false or misleading information could be prosecuted as federal criminal offences by the Attorney General of Canada or dealt with by civil means. Information provided by taxpayers cannot be shared with other agencies except as expressly provided by law. However, Revenue Canada can, and does, cooperate with law enforcement agencies in both countries and the U.S. Internal Revenue Service where possible to control telemarketing fraud and other crime problems.
- **Provincial regulatory agencies.** The primary jurisdiction over commercial activities ("property and civil rights") in Canada is with the provinces. All 10 provinces and both territories have consumer-protection legislation in some form, and most contain provisions similar to those of their U.S. counterparts. They place restrictions on various direct-marketing techniques, impose requirements for disclosure, bar misleading practices and in some cases, provide "cooling-off" periods before contracts become binding. Remedies include civil litigation (individual or class-actions), restitution, rescission of contracts, damages, and a series of offences and penalties. In Canada, the trading in stocks, bonds and other securities is exclusively regulated by the provinces, which impose prospectus or disclosure requirements to prevent deception.

### 3.4.2 United States

- **The Federal Trade Commission (FTC)**, has general federal jurisdiction over consumer protection, including extensive civil and administrative powers to deal with fraud. Under the *Federal Trade Commission Act*, the FTC can prevent unfair or deceptive acts or practices, seek redress, regulate trade practices, investigate and file civil actions for violations of the *Act*, and make reports and recommendations to Congress. Historically, the FTC has brought most actions against fraudulent telemarketers under § 5 of the *FTC Act*, which deals with unfair or deceptive practices affecting commerce. § 13(b) provides for federal court injunctions, which may be used before or after violations occur to stop violations and protect victims by freezing assets and appointing receivers.

The *Telemarketing and Consumer Fraud and Abuse Prevention Act* (15 U.S.C. § 6101) also gives the FTC powers to regulate telemarketing and prohibit abuses. It also empowers the FTC and state Attorneys General to bring federal civil actions for regulatory violations. The 1995 *Telemarketing Sales Rule (TSR)*, implementing the *Act*, requires telemarketers to identify themselves, accurately describe goods or services offered, and tell consumers that "prize promotions" cannot require any purchase or payment. Disclosure must be given before payment, and must include such things as accurate contest odds, refund policies and any other material restrictions, limitations, or conditions. The *TSR* also prohibits credit card laundering through unauthorized merchant accounts, accepting payment before some types of services are rendered, and abusive practices, including threats,

profane language, repeated calls or harassment, calls to consumers who have asked not to be called, and calling before 8:00 a.m. or after 9:00 p.m.

Other FTC powers include: the *Franchise Rule* (disclosure about business opportunities to investors); the *Mail or Telephone Order Rule* (notice that goods will not arrive in a promised or prescribed time); the *Electronic Fund Transfer Act* (barring unauthorized bank debits by EFT); the *"900 Number" Rule* (regulating the pay-per-call industry), and the *Fair Debt Collection Practices Act* (prohibiting deceptive or abusive conduct).

- **Other federal agencies.** The Commodity Futures Trading Commission and the Securities and Exchange Commission can investigate and conduct litigation against misleading telemarketing schemes involving commodities and securities, respectively. The Postal Inspection Service has similar powers for mail fraud and other abuses of the mails.

- **State Authority.** All 50 states have the power to regulate general trade and commerce, and every state and the District of Columbia has statutes which apply to most consumer transactions, aimed at preventing deception and abuse in the marketplace. Many are patterned after the *FTC Act's* "unfair or deceptive practices" prohibitions, allowing widespread redress to protect consumers. 45 states also have specific legislation regulating telemarketing. Generally, these require telemarketers to register, post bonds, or make certain disclosures to prospective customers. Some also put restrictions on specific transactions, especially those involving gifts or prizes. As noted above, state Attorneys General also enforce the federal FTC *Telemarketing Rule*, and some states have adopted rules of their own.

## **3.5 OTHER SOURCES OF AUTHORITY**

### **3.5.1 Investigative powers**

Canada and the United States both have a range of powers and procedures for investigating telemarketing fraud. A technique used in both countries, electronic surveillance, is of major importance because telephones are the primary instrument for offenders. The tapping, monitoring and recording of telephone conversations require some form of court order or permission as a safeguard of constitutional rights. In the United States, calls can be monitored under federal law without a court order if one of the parties consents. In Canada the situation is more limited. The monitoring of cross-border calls can raise other legal issues as well. The importance of electronic surveillance methods for investigating this offence is clear, and better information about how they can be used in the various jurisdictions would be useful in coordinating investigations. **The Working Group recommends that the legal and technical potential and limits of electronic surveillance as a tool against telemarketing fraud in both countries be explored further.**

### **3.5.2 Bail statutes**

Bail statutes in both countries provide a means to suppress telemarketing operations where the participants are already facing criminal charges. They allow courts to impose conditions for release which could be used to bar offenders from using telephone services for telemarketing or prevent them from associating with other offenders. These conditions may also apply to release pending extradition. Breach of such conditions or the commission of further offences while on bail can result in offenders being held in custody until they are tried or extradited.

### **3.5.3 Blocking or terminating telephone service.**

The fact that telemarketing fraud requires the use of telephone services led the Working Group to consider ways in which known offenders could be deprived of those services. Services could be terminated completely, limited so as to make telemarketing activities impossible, or calls to or from specific numbers blocked. At present, neither country has specific statutory powers to do this. In the United States, only one federal statute, 18 U.S.C. § 1084(d), authorizes a common carrier to terminate service based on criminal use of the telephones. It requires that the carrier be given written notice by a law-enforcement agency that the service is being used or will likely be used to transmit gambling information. Customers must be given reasonable notice, and can challenge the disconnection in court. Both countries have provisions, such as the bail statutes discussed above, which may be used as the basis for court orders denying known offenders access to services for telemarketing under specific circumstances.

Common carriers and service providers in both countries can block or terminate service where customers are in breach of contract. Indeed, this is not uncommon where customers do not pay telephone bills or are caught defrauding the companies themselves. In Canada, regulations impose some conditions on service contracts, and it is possible that telecommunications regulators could take steps to ensure that contracts require customers to agree not to use the telephones for

telemarketing fraud or to engage in specified deceptive business practices. Contracts could also make formal notification by law-enforcement or administrative officials that service was being used for deceptive practices, or the order of a court or tribunal, grounds for terminating service. This could be an important tool for controlling telemarketing fraud, since the offences cannot be committed without telephone service.

Any expansion of powers to terminate telephone services would need to identify offenders and lines quickly and accurately. It would also have to allow whatever legal proceedings were needed to be finished quickly and expeditiously. It is important to ensure that only offenders are targeted, but that the system can react quickly to those who move or hide their identities to avoid disconnection. The two major alternatives discussed were:

- the use of orders from a court or tribunal directing telephone companies to disconnect those against whom a finding was made, or
- the use of contract terms (i.e., that the customer not use the telephone to commit offences) to permit the provider to disconnect summarily, forcing the customer to initiate proceedings, if any, for breach of contract.

While law-abiding individuals have a right to telephone services, professional criminals who abuse the service for fraudulent activities should not. **The Working Group recommends that both countries examine the regulation of telephone services and consider options which would permit the denial of telephone services to telemarketing offenders.**

### 3.6 MUTUAL LEGAL ASSISTANCE

Law enforcement agencies informally share investigative information across the border within the legal limits of both countries, and much information can be handled in this way. The legal limits include the constitutional, privacy and security safeguards in place in both countries. The *Mutual Legal Assistance Treaty (MLAT)* between the United States and Canada and domestic legislation in both countries provide a framework for each country to obtain information for the other on formal request. *MLAT* requests, for example, form the basis for search warrants allowing the recipient to obtain the evidence requested.

Formal *MLAT* proceedings can consume valuable time and resources for those at both ends of the process. Offenders can sometimes delay proceedings or get information about the evidence being gathered against them by challenging *MLAT* requests. Some forms of assistance are not presently available under the *MLAT* and domestic legislation. **The Working Group recommends that the scope of the existing Canada-U.S. mutual legal assistance arrangements be considered to determine whether these might be expanded to deal more effectively with telemarketing-fraud cases.**



There appears to be uncertainty in the law-enforcement community about when *MLAT* requests are necessary and when they are not, which can result in using them when they are not needed. **The Working Group recommends that the circumstances under which formal mutual legal assistance requests are needed be clarified by providing legal information and advice to the agencies involved.**

### 3.7 EXTRADITION

The Working Group views effective extradition provisions as a major element of the overall strategy against telemarketing fraud. Extraditing offenders for trial in the jurisdictions where most of the witnesses and victims live serves justice and is cost-effective, particularly given the long distances involved in many telemarketing frauds. The fact that victims in these cases are often elderly argues both for and against extradition: extraditing offenders limits travel for frail witnesses, but the delays which occur often mean that elderly witnesses die or become incapacitated before a criminal trial can be held. The Working Group is concerned that the costs and procedural delays for extradition are often so great that agencies reported abandonment of prosecutions or agreement to unfavourable pleas in extreme cases.

The Working Group noted two differences between the extradition procedures of Canada and the United States. Extradition from Canada currently requires requesting states to provide the quality and quantity of evidence typically sought at a full trial: first-party witness affidavits establishing a *prima facie* case. This is a higher standard than that required by the United States and most European countries, which allow a single sworn summary of the prosecution's evidence. This situation is presently under review by the Government of Canada. The United States also normally holds those facing extradition proceedings in custody, whereas in Canada, they are subject to the same bail-release conditions as persons charged with Canadian criminal offences. This is unlikely to change, but it was noted that bail can be denied or revoked if offences are committed while on release, and that conditions intended to prevent this can be imposed. The Working Group also considered the concerns of some participants that the judgment of the Supreme Court of Canada in *U.S.A. v. Cotroni* might require the trial in Canada of telemarketers who are Canadian citizens. A review of the case suggests that it sets guidelines for reviewing the extradition of Canadian citizens who could be prosecuted in Canada, but does not create a general prohibition. **The Working Group recommends that the Canada-U.S. extradition arrangements be examined, and if possible modified, to facilitate and accelerate extradition in telemarketing fraud cases.**

### 3.8 DEPORTATION

Deportation cannot be used as a substitute for extradition, nor can either country deport one of its citizens. A key characteristic of telemarketing fraud is the mobility of offenders, however, which makes it possible that offenders in some cases may have moved from one country to another. In both Canada and the United States, persons can be deported because they have committed crimes, because they have misled immigration authorities about previous criminality, or simply because they are

working without permission. This may be the case in some telemarketing situations, and if so, offenders could be deported. **The Working Group recommends that the provisions of the federal laws of both countries which might allow for the deportation of foreign nationals caught engaging in telemarketing fraud be reviewed, and that enforcement agencies be provided with information about the circumstances under which deportation may be an option in such cases.**

## **4. EDUCATION AND PREVENTION**

The essence of fraud is that victims are deceived into acting to their own disadvantage. The deception makes it both possible and necessary to prevent the frauds from succeeding by giving potential victims information to protect themselves. To succeed, educational programs must have accurate information about who commits the offence, who is likely to be victimized by it, and how this occurs. **The Working Group recommends that structured and methodical research be conducted into offenders, victims and other aspects of telemarketing fraud, and that the results be used to create effective educational materials and strategies to prevent it.**

Education and prevention efforts are a critical element of any overall strategy to control telemarketing fraud. They can save large numbers of prospective victims the emotional and material consequences of losing irreplaceable funds or assets. They may also deter offenders by making telemarketing fraud unprofitable. There are several ways in which the United States and Canada can usefully collaborate to make prevention efforts more effective. Authorities can share information about victims, offenders and the offence itself, and about the messages and media used and their effectiveness. They can also work together on particular education projects, coordinating timing, media and messages to reach consumers in both countries more effectively than if either country acted alone. **The Working Group recommends that the governments and agencies of Canada and the United States cooperate as closely as possible in developing and maintaining educational materials and effective programs to disseminate them, and in coordinating their education and prevention efforts.**

Examination of these questions in a binational context involves four key questions.

- Whom should we seek to educate?
- Through what communications media can they best be reached?
- What messages should be delivered?
- How can our governments and agencies effectively cooperate?

### **4.1 EDUCATING THE GENERAL PUBLIC**

Government agencies and non-governmental organizations in both countries already publish brochures, manuals, pamphlets, and other materials that contain valuable information about telemarketing fraud. These include messages intended to raise general awareness of the problem and to convey specific information about particular schemes and how they work. In most cases these efforts form part of general consumer-education or crime-prevention programs. They have the advantage of reaching very large numbers of people, but because telemarketing fraud is only a small part of more general consumer-protection and crime-prevention agendas, it only forms a small part of the overall message. This means that information cannot be detailed, and may be overlooked in the competition for attention with other, higher-profile elements of the package.

The Working Group noted one particularly disturbing fact about how the offence is perceived, by both the general public and by victims themselves. Some do not view it as a criminal offence at all, but as simple bad judgment on the part of victims. This perception can lead to a tendency to blame the victims for their own losses. It affects how society sees the victims, and how the victims see themselves. This in turn can influence the way the offence is treated by law-enforcement and regulatory agencies, and when offenders are convicted, by the courts which sentence them. **The Working Group has already recommended that telemarketing fraud be labelled as a serious form of economic crime. It is important that this most fundamental fact be made a key part of the message directed at the general populations of Canada and the United States.**

## **4.2 EDUCATING SPECIFIC SEGMENTS OF THE PUBLIC**

Focusing education on specific target groups allows resources to be used more effectively and more detailed messages to be communicated. It is the offenders, not governments, who choose the victims, and prevention requires that authorities determine who is most likely to be targeted and reach out to them before the offenders do. This involves identifying target groups based on risk - the likelihood that offenders will contact them and the likelihood they will be victimized if contacted. Mature adults, including the elderly, who have worked for many years and have accumulated substantial funds, assets, or credit, are more attractive to offenders.

**Choosing target groups.** Target groups may be defined by whatever characteristics make them seem suitable to offenders, by research into which population groups are actually being targeted, or by specific information, such as "mooch" or "sucker lists" seized by police. As noted above, senior citizens are being disproportionately victimized, and they are already one focus of education efforts in both countries. Lists compiled by offenders themselves, where available, are used in the "reverse boiler-room" education efforts described below. It may sometimes be possible to target specific cities or regions with anti-fraud advertising if they are identified as being singled out by offenders. The identification of potential victim groups is important because it allows messages to be constructed and delivered with the maximum impact at the least cost. Once target groups are identified, appropriate messages must be developed and appropriate media chosen to deliver them in ways which will be received, understood, and remembered.

**Choosing the media.** The Working Group did not examine media in detail, but did note that such things as information brochures, pamphlets, newsletter pieces on telemarketing, inserts in pension cheques, and radio, television or newspaper advertising have already been used effectively. Specific groups can often be reached through their own newsletters or organizations. Internet websites may also become an important medium, particularly if, as potential victims go "on line", offenders do so as well. Speakers from public and private organizations can talk about illegitimate telemarketing to affected groups, using presentation kits developed to assist them. Possibly the best medium for contacting victims directly is the one used by the offenders themselves, the telephone, a fact demonstrated by the success of "reverse boiler-room" operations (below).

**Developing the message.** The nature and content of the message will also vary depending on the nature of the target audience and other circumstances. Messages directed at specific groups must be framed in terms that those groups are likely to see and understand. Offenders have targeted victims based on factors such as age, disability, language, and culture. Each of these factors is a challenge to those who must find ways to communicate with potential victims more effectively than the telemarketers can. Messages must also be changed from time to time, to keep up to date with the latest developments in fraud, and to be interesting and relevant to the public.

### **4.3 TWO SUCCESS STORIES: CONSUMER "HOTLINES" AND "REVERSE BOILER- ROOMS"**

- **"Hotlines" for Consumer Questions and Complaints.**

Government and non-government organizations in both countries have set up telephone lines for complaints about fraudulent telemarketing or general consumer matters. These exchange information both ways: victims can be given information about how to complain effectively and how to avoid being victimized again, and the operators gain valuable and timely information about ongoing frauds. Law-enforcement can use this for investigations or enforcement proceedings, and educators can use it to keep their materials and programs up-to-date. Since the information is voluntarily provided by members of the public, there appear to be few legal restrictions on how it can be used.

The Canadian "Phonebusters" unit, a joint project of the Ontario Provincial Police and federal agencies, and the U.S. National Fraud Information Center (NFIC) both run nation-wide, toll free hotlines, and the Federal Trade Commission (FTC) recently set up a Consumer Response Centre. The U.S. agencies download the information they compile into the Telemarketing Complaint System (TCS), a data-base run by the FTC and the National Association of Attorneys General (NAAG). The FTC recently voted to share its complaint data with Canadian law enforcement agencies; the Canadian data are now being transferred to the TCS. These steps will enhance the ability of agencies in both countries to monitor and act upon complaints quickly, no matter where they originate.

- **"Reverse Boiler Rooms"**

The more specifically targeted a message is, the more detailed and effective it can be. This is demonstrated by the success of "reverse boiler-room" projects which contact potential victims using the same means the offenders do: the telephone. Telemarketing "boiler rooms" use salespeople to telephone prospective victims, and law enforcement and consumer organizations have all employed the same principle in reverse: groups of volunteers make large numbers of calls to those whose names appear on "mooch lists" or "sucker lists" seized from offenders. Calls may warn about the general problem, or about particular telemarketing frauds known to be in operation, and one-on-one contact allows callers to answer questions or give information needed by the individual recipient. Groups conducting reverse boiler rooms in the United States report that persons called appreciate the effort and the information they receive. The Working Group encourages its agency participants to assist in the development and conduct of future reverse boiler rooms in both countries.

## 5.0 CANADA-UNITED STATES COOPERATION AND STRATEGY

The nature of telemarketing fraud makes cooperation between agencies and governments particularly important. The ease with which offenders can defraud victims in other jurisdictions and their ability to change their tactics or targets require governments to be flexible and coordinated in responding. The foregoing sections have identified a variety of powers, programs, and techniques available for use against telemarketing fraud. Developments in both countries have already demonstrated the benefits of regional and inter-agency cooperation and coordinated strategies at the regional and national levels. The cross-border aspect of the crime simply extends the same principle to the international level. Our shared goal should be to establish that the Canada-U.S. border will not be allowed to become an obstacle to controlling telemarketing fraud. **The Working Group recommends that strategies directed at the control of telemarketing fraud be coordinated between Canada and the United States at the agency, regional and national levels.**

### 5.1 Basic Strategic Goals

The ultimate objective is to reduce the harm that telemarketing fraud causes to victims and society. The various measures identified in this Report offer different ways of achieving this, which will be most effective if used in accordance with defined strategic goals. The Working Group identified the following goals on which specific strategies can be based.

- **Agencies should react quickly to offences.** The longer it takes to establish that a fraud operation is active, the more people are victimized and the higher investigation and prosecution costs will be. The dispersal of offenders, victims and agencies makes this worse by delaying effective actions. This requires agencies to gather information quickly, assess what is relevant, and transmit it quickly to other agencies and jurisdictions. It is important to establish which agencies are in the best position to take action and to provide them with the information they need to do so as quickly as possible.
- **Strategies should combine prevention, enforcement and punishment.** All three of these elements are equally important in controlling this problem. Justice requires that telemarketing fraud be denounced as a crime and offenders punished accordingly. It is also important that regulatory and enforcement powers be used quickly and effectively against ongoing frauds to limit the damage and bring offenders to justice. The third element, prevention, is important because reaching victims before the offenders do prevents harm from occurring in the first place and deters offenders by making the crime unprofitable.
- **Strategies should be as cost-effective as possible.** Telemarketing fraud is more expensive to investigate and prosecute than many other crimes, but cost-effective methods can be found. Tested investigative methods can be adapted and if needed, new ones can be developed. Devising efficient strategies and coordinating them to avoid duplication of effort will ensure that the best possible results are achieved with available resources. The ability to prevent frauds or to

react quickly when they occur may reduce the numbers of victims and losses and the costs of investigation and prosecution.

- **Victims are important.** Considering victims' interests is important with this offence because of the large numbers of people victimized. Strategies should deal directly with victim interests by preventing or reducing their losses and by recovering proceeds for restitution where possible. It is also important that victims are kept informed about proceedings and that their evidence about victim-impact is heard by the courts. Given the age of many victims and the impact the offence often has on their lives, victim support programs are also important to minimize long-term impact and prevent further victimization.
- **Strategies should be flexible.** Telemarketing frauds evolve as the technology changes and offenders find new ways to take advantage of it. The ability of offenders to move and change their operations quickly requires that both enforcement and prevention programs be flexible enough to react as quickly as the offenders can.
- **Strategies should include an ongoing, long-term commitment by agencies.** Telemarketing fraud requires expertise on the part of enforcement and regulatory agencies. Those involved must have a knowledge of the offence, of offenders and their methods, and of the agencies and powers available to respond. Expertise takes time to develop, which requires the commitment of personnel and funding to specialized units in law-enforcement and regulatory agencies. This expertise permits faster and more effective reactions, which also reduces costs.

## 5.2 Operational Approaches

In practice, these elements can be combined in different ways to approach the problem. The most effective approach in each case will depend on the nature and scope of the fraud scheme involved and the resources deployed against it. The Working Group considered several general options, but recognizes that specific recommendations cannot be made in the abstract. Agencies must be free to choose and combine approaches as the circumstances warrant. The following options are general descriptions only and are not mutually exclusive. A truly effective strategy will be flexible enough to select and apply whichever approaches are best suited to a particular problem.

- **Larger-scale investigations and prosecutions.** Larger investigations involving many investigators, agencies, jurisdictions and technical resources are often demanded by the geographical scope of telemarketing-fraud schemes, and justified by the large numbers of victims and substantial proceeds generated. This approach may also offer evidentiary advantages if large numbers of individual fraud transactions are combined into a single large case for trial. It may also generate longer sentences, as the courts can be shown the true extent of the operation and the amount of the proceeds. In this model, coordination is important to ensure all jurisdictions and agencies act together on combined operations, working on the same schedule towards the same ultimate goal.

Charges tend to focus on traditional criminal frauds, invoking long sentences and full criminal-law powers and procedures.

- **Smaller-scale investigations and prosecutions.** The use of larger numbers of smaller, less-expensive proceedings is less likely to generate the substantial sentences or result in the conviction of entire fraud organizations, but offers other advantages. Smaller investigations can be concluded more quickly, allowing authorities to move more quickly against ongoing frauds. They also may require fewer investigators and technical resources, allowing more operations to be conducted with available resources, and tend to be more flexible, allowing authorities to react more quickly when offenders move or change tactics. In this model, coordinating separate investigations against the same offenders is particularly important. Agencies need to pass on information to give others the basis to take quick action, and when offenders move, to alert other jurisdictions.
- **The disruption of offenders' operations.** Telemarketing fraud is a complex offence which requires numerous conditions to work effectively. A number of enforcement and regulatory options could be used to make the offence more difficult, and less profitable, to commit. Some of these involve the technology used to commit the offence: offenders might be deprived of the telephone services needed for telemarketing, or of their anonymity in using it, for example. Others involve civil and administrative actions which target proceeds, taking away the basic profit motive and depriving offenders of the resources needed for litigation and starting new fraud schemes. What they have in common is that they increase offender costs and risks and decrease potential proceeds, thereby making the offence easier to control and less attractive to offenders.
- **Prevention.** The most cost-effective means to control any crime is to prevent it, since this avoids the costs both to victims and society. Prevention is never completely effective, which makes enforcement and punishment necessary, but educating potential victims has considerable potential in preventing telemarketing fraud. If used effectively, it also has the potential to deter offenders by making the offence less profitable and more risky.

### 5.3 ELEMENTS OF A BINATIONAL STRATEGY

Strategies to deal with cross-border telemarketing fraud will incorporate the same elements and approaches set out above, but with the added need for the United States and Canada to coordinate activities and where possible to act jointly for mutual benefit. With this in mind, the Working Group identified the following areas in which greater coordination or closer cooperation will assist in the effort.

- **National cooperation and the Working Group.** Much of the practical cooperation should be left to the specific agencies which deal with actual cases (below), but there is also a need for the coordination of general policy matters at the national level, and some key subjects, notably foreign policy, extradition, and *MLAT* matters, must be dealt with federally in both countries. The Working Group represents the first effort of Canada and the United States to develop a joint binational approach to telemarketing fraud by examining each country's



experiences with it. It has provided an excellent opportunity for substantive discussions, exchanges of information and ideas, and the establishment of institutional relationships at all levels of government. Further meetings would ensure that matters of cross-border enforcement are dealt with as they arise, and serve as a meeting-point from which to coordinate the activities of the various regional groups. **The Working Group recommends that an ongoing binational working group serve as an overall coordinator and deal with national and binational telemarketing fraud issues as they arise.**

- **Regional and agency cooperation.** Both countries have regional task forces of law enforcement and regulatory agencies to deal with telemarketing fraud. Their successes in convicting some offenders and driving others out of telemarketing suggest that cross-border cooperation may bring similar benefits. Many regulatory and law-enforcement efforts are focused at the regional level, and it is here that cross-border cooperation between states, provinces and federal authorities is likely to have a direct impact on specific offenders and their operations. Personal contact between investigators familiar with ongoing operations in their regions is also important to ensure that vital information is transferred quickly and reaches those who are in a position to use it effectively. Regional task forces have already begun cooperating across the international border, and their efforts are beginning to show results. **The Working Group recognizes the usefulness of regional task-forces on telemarketing fraud. It recommends that they be encouraged to cooperate across the international border to the maximum extent possible.**

- **Prosecutorial cooperation.** Prosecutors from the federal, state and provincial levels participated in the Working Group and have been active in its regional counterparts. Formal and informal cooperation in developing and prosecuting cases underlies many of the specific issues raised relating to the transfer of information, evidence, witnesses, and ultimately fugitive offenders, from one jurisdiction to another. Close cooperation also raises resource issues, which in turn raise institutional and sovereignty concerns where the agencies involved are in different countries. The Working Group noted one way in which costs might be shared, however. Ordinarily, the burden of contacting and transporting witnesses falls on the agency seeking their testimony. In telemarketing fraud cases, once those involved have determined who is in the best position to prosecute offenders, it may be appropriate for agencies in other jurisdictions where victims or other witnesses reside to arrange their travel if their evidence is needed and cannot be given by other means.

- **Information-sharing.** Passing accurate and secure information between agencies avoids duplication of effort and allows them to react more quickly against ongoing fraud schemes. This involves gathering reliable information from consumer complaints, police, regulators and other sources, and ensuring that it reaches the agencies best placed to take action as quickly as possible. The Working Group is aware that there may be some legal restrictions on what information can be shared and with whom, but there appears to be much that can be done within legal limits. It supports the information-transfer between Phonebusters, the NAAG, the NFIC and the FTC as an effort which should significantly assist authorities in both countries.

Both Canada and the United States are exploring further means of storing and accessing consumer complaint data, working towards shared-access databases on which their agencies can quickly and securely post, exchange and retrieve relevant information. In Canada, provincial consumer ministries and Industry Canada are developing *Canshare*, which would compile consumer-protection information on a single national database accessible to Canadian agencies. There are numerous federal and provincial privacy requirements which would have to be examined in detail before this information could be routinely accessible to U.S. agencies. In the United States the FTC and NAAG are developing the *Consumer Sentinel Binational Telemarketing Network*, which would be open to Canadian agencies, subject to confidentiality agreements. While there are legal limits on cross-border information-sharing, the advantages of some form of joint-access system would be substantial.

**The Working Group recognizes the usefulness of shared-access information systems as a means of passing information quickly and securely between agencies. It recommends that, to further coordination, governments and agencies examine privacy and other laws relevant to cross-border shared access information systems with a view to expanding access to such systems to the maximum extent possible.**

- **Resources.** The distances involved and the dispersal of victims make telemarketing frauds, especially large ones, more expensive to investigate than most other white-collar crimes. The sophistication of the offenders requires a stable and expert law-enforcement and regulatory response, which in turn demands an ongoing, stable resource commitment within agencies. Resources are also needed to support regional and international efforts in dealing with specific cases and more generally, in developing information-sharing, education and prevention efforts. While each country must determine for itself what combination of resources and participating agencies will be most effective in its national strategy, the Working Group recognizes that a commitment of resources dedicated to telemarketing fraud will be needed to mount an effective response to the problem.

## **6. CONCLUSION**

Telemarketing fraud has become a serious and expanding problem on both sides of the Canada-U.S. border. Cross-border fraud poses a significant challenge for both governments. It is an international problem, requiring the joint and coordinated efforts of both countries to control. No single government, organization or agency in either country, working alone, can solve it. An effective campaign will require cooperation in developing strategies and options and in putting them into effect. It should use all available expertise and resources from federal, state, provincial and local governments and their agencies and from the private sector. With a sound combination of strategies and tactics, the United States and Canada can meet the challenge and have a meaningful, even decisive, impact on this most pernicious of white-collar crimes.

